83-274

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. _____

SHERMAN ADAMS, ... PETITIONER

versus

CITY OF SHEPHERDSVILLE MAYOR, . . RESPONDENT
JAMES T. SPARROW AND
OFFICER BEN STILLWELL

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Louisville, Kentucky
40220
(502) 451-4445

Counsel for Petitioner

SUPPLEMENTAL APPENDIX

CERTIFICATE OF SERVICE

This is to certify that three copies of this Petition for Writ of Certiorari have been served upon the Hon. Mark Edison, Counsel for Respondent, 217 Buckman Street, Shepherdsville, Kentucky, 40165. This is to further certify that all parties required to be served have been served by ordinary mail this 18th day of August, 1983, postage pre-paid and that service of this Petition has been made in conformity with Supreme Court Rule 28.3.

DAVID MURRELL

REBECCA MURRELL

NO. 82-5094
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SHERMAN ADAMS

Plaintiff-Appellant

v.

O R D E R

CITY OF SHEPHERDSVILLE,
MAYOR JAMES T. SPARROW,
OFFICER BEN STILLWELL

Defendants-Appellees

Before: LIVELY and ENGEL, Circuit Judges; and CELEBREZZE, Senior Circuit Judge.

The plaintiff appeals from the judgment of the district court entered on a directed verdict at the conclusion of the plaintiff's case. The plaintiff was convicted of violation of Kentucky's disorderly conduct statute in proceedings that were commenced with a complaint signed by the mayor of Shepherdsville. The complaint arose out of the refusal of an organization of which the plaintiff was the head to disperse a parade on a main thoroughfare of the city after being requested to do so by the mayor and ordered

to do so by the defendant police officer. The parade was carried off without incident and 17 days later the mayor signed a complaint. Thereafter the plaintiff was convicted of disorderly conduct in the Shepherdsville Police Court, appealed and at a trial de novo was again convicted by a jury in circuit court. Thereafter he took unsuccessful appeals to the Kentucky Court of Appeals and the Kentucky Supreme Court.

The present action charges that the plaintiff's First Amendment rights were violated by the defendants. The district court found that the police officer did nothing more than order a crowd to disperse, that the crowd did not disperse and that no constitutional rights were violated by this action. The district court also found that the mayor signed the complaint 17 days after the incident in his individual capacity as a citizen and not in his official capacity as the mayor. In granting the motion for

directed verdict the district court found that the city and the police officer did not deprive the plaintiff of any rights andthat the mayor did not act under color of law in filing the complaint. Thus the requirements for proceeding under 42 U.S.C. §1983 were not met with respect to the claims against any of the defendants.

Upon consideration of the briefs and oral arguments of counsel together with the record on appeal, this court concludes that the district court did not err, after having heard all of the plaintiff's evidence, in granting a directed verdict for the defendants. Accordingly, the judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

Clerk

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

SHERMAN ADAMS Plaintiff	)	
v.	)	NO. C 80-0236-L(B)
CITY OF SHEPHERDSVILLE, MAYOR JAMES T. SPARROW, OFFICER BEN STILLWELL Defendants	)	

J U D G M E N T

For the reasons set forth in the Memorandum filed this date,

It is ORDERED that the motion of the defendants, James T. Sparrow, Ben Stillwell and the City of Shepherdsville, for directed verdict be and it hereby is granted and this action be and it hereby is dismissed with prejudice at the cost of the plaintiff.

There is no just reason for delay, and this is a final and appealable Order.

This 11th day of January , 1982.

Thomas A. Ballantine, Jr.
United States District Judge

Copies to:

Counsel of record

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

SHERMAN ADAMS Plaintiff	)	
v.	)	NO. C 80-0236-L(B)
CITY OF SHEPHERDSVILLE, MAYOR JAMES T. SPARROW, OFFICER BEN STILLWELL Defendants	)	

MEMORANDUM

This matter came on to be tried before the Court with a jury on January 7 and January 8, 1982. At the conclusion of plaintiff's evidence the defendants moved for a directed verdict, F.R.Civ.P. 50(a), and the Court granted the motion. Since the Court's reasons for granting the motion differ from the reasons presented by defendants in support of their motion, the Court finds it appropriate to set forth the grounds upon which it relied.

FACTS

On November 25, 1980, in a memorandum denying plaintiff's motion for summary judgment, the Court set forth

the facts from which this action arose. The Court has also recited the factual background of this controversy in its memorandum granting plaintiff's petition for a writ of habeas corpus. See Adams v. Bullitt County Jailer, C 79-0572-L(B) (W.D. Ky., 1979). Those memoranda are incorporated herein by reference.

Briefly, it was established at the trial that plaintiff is the leader of the Ku Klux Klan in Kentucky. That organization determined that it should mark the Bicentennial Anniversary of the Declaration of Independence by a parade through the streets of Shepherdsville, a Kentucky community of about 4500 people. At the time of the parade, Saturday, July 3, 1976, Shepherdsville had a police force of four full-time and four part-time officers.

On June 14, 1976, plaintiff and some of his fellow Klansmen appeared before the Shepherdsville City Council, made up the Mayor, defendant Sparrow, and five

councilmen. The Council voted to issue a parade permit. On July 1, 1976, the Council rescinded the permit, reciting what it perceived to be imminent danger of violence. (Both the issuance and rescission of the parade permit were probably nullities, since Shepherdsville has no ordinance requiring parade permits.)

On July 3, 1976, about 200 Klansmen, many robed and hooded and carrying firearms, gathered on a side street in Shepherdsville to form the parade. Defendant Sparrow asked them to disperse. When this request was ignored defendant Stillwell, Chief of the Shepherdsville Police Department, using a bullhorn, ordered the paraders to disperse. This order was no more effectual than the Mayor's request and the parade was held admittedly without incident.[1]

Seventeen days later defendant Sparrow signed a complaint charging plaintiff with a violation of KRS 525.060 (1) (d).[2] A warrant was issued and

plaintiff was arrested. He appeared before the Shepherdsville Police Court, presided over by a nonlawyer. He was found guilty and sentenced to 30 days in jail and fined $100.00 plus $12.00 in court costs. The jail sentence, the fine and the costs were "probated".

Plaintiff appealed the conviction to the Bullitt Circuit Court. He was tried by that court with a jury, found guilty and sentenced to 90 days in jail and fined $250.00. Attempted appeals to the Kentucky Court of Appeals and the Supreme Court of Kentucky were dismissed on procedural grounds and on November 2, 1979, plaintiff began service of his jail sentence. As we have noted, this

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[1]At trial plaintiff offered the somewhat incredible testimony that members of the black community of Shepherdsville applauded and cheered the parading members of the Ku Klux Klan.

[2]KRS 525.060: (1) A person is guilty of disorderly conduct when in a public place and with intent to cause public inconvenience, annoyance or alarm, or wantonly creating a risk thereof, he: **** (d) Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose."

Court granted plaintiff's petition for a writ of habeas corpus and he was discharged on December 21, 1979. This action was filed April 30, 1980. Plaintiff invoked the Court's jurisdiction under Title 42 U.S.C. Section 1983.

The complaint which the defendant Sparrow signed and upon which the warrant was issued, contained no reference to his position as Mayor of Shepherdsville.

DISCUSSION

After hearing the evidence the Court concluded that no violation of Section 1983 could be successfully maintained against Stillwell. The only participation attributed to him was his ineffective order to disperse. Had Stillwell successfully blocked the parade we might reach a different conclusion. He did not and his motion for directed verdict was granted.

We turn next to the more troublesome question of Sparrow's actions. As we

have noted, the complaint was signed some 17 days after the parade and was signed "James T. Sparrow". The complaint is facially valid in that it charges a public offense. It is a complaint that could have been signed by any citizen of Shepherdsville.

It is elementary that:

> "(T)he terms of Section 1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a right secured by the 'Constitution and laws' of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right 'under color of any statute, ordinance, regulation, custom or usage of any State or Territory'. This second element requires that the plaintiff show that the defendant acted 'under color of law.'" Adickes v. S.H. Kress & Co., 398 U.S. 144, 150, 90 S. Ct. 1598, 1604 (1970).

Since we conclude that the signing of the complaint was not an act that amounted to a misuse of power possessed by virtue of state law and made possible only because Sparrow was clothed with authority of state law, Williams v. United States, 341 U.S. 97, 71 S. Ct. 576 (1951), we determine that plaintiff cannot meet

the secondelement of Adickes, supra. See also, Kerr v. City of Chicago, 424 F.2d 1141 (7th Cir. 1970).

In Baker v. McCollan, 443 U.S. 137, 99 S.Ct. 2689 (1979), the Court wrote:

"Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be sought in state court under traditional tort-law principles. Just as '(m)edical malpractice does not become a constitutional violation merely because the victim is a prisoner,' Estelle v. Gamble, 429 U.S. 97, S.Ct. 285, 292, 50 L.Ed.2d 251 (1976), false imprisonment does not became a violation of the Fourteenth Amendment merely because the defendant is a state official.

Having been deprived of no rights secured under the United States Constitution, respondent had no claim cognizable under Section 1983." 443 U.S. at 146, 99 S.Ct. at 2695.

Our determination that neither individual defendant is liable to plaintiff under Section 1983 compels the conclusion that the defendant, City of Shepherdsville, is outside the holding in Owen v. City of Independence, Missouri, 445 U.S. 622, 100 S.Ct. 1398 (1980). There simply isn't any evidence of action taken by any

representative of the City under color of law. Whether plaintiff would have had a cause of action against Sparrow for malicious prosecution or false arrest we do not decide.

CONCLUSION

For the reasons discussed above, the Court has determined that defendants' motion for directed verdict should be granted, and an appropriate Judgment has been entered this date.

January 12, 1982

Thomas A. Ballantine, Jr.
United States District
Judge

Copies to:

Counsel of record